IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1966
No. 658

Supreme Court, U.S.
FILED
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GENERAL MOTORS CORPORATION,
A Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),

Appellant,

v.

APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,

and

Appellees,

ROBERT H. STINSON, et al.,

Appellees.

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellee—Michigan employment security commission, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the above entitled case be dismissed or affirmed on the grounds (1) that no substantial federal question is raised, and (2) that the decision of the supreme court of Michigan rests on an adequate non-federal basis.

OPINIONS BELOW

The questions appellant seeks to review were considered in the opinions of the supreme court of Michigan in 376 Mich 135, 135 NW 2d 921 (July 13, 1965), and 378 Mich 110, 142 NW 2d 686 (June 8, 1966), reproduced in the Jurisdictional Statement, Appendix A-10 (pp 46-58) and Appendix A-11 (pp 59-66), respectively.

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 62 Stat 929 (1948), 28 USC §1257 (2) and §2102 (c).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Michigan employment security act[1] are follows:

> Sec. 2. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social Security requires protection against this hazard of our

[1] Act No. 1, PA 1936, ex sess, as amended (CL 1948 §421.1 *et seq.* [Stat Ann 1960 Rev §17.501 *et seq.*])

economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

Sec. 29. (1) An individual shall be disqualified for benefits:

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which a labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed.

Sec. 31. No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ. * * * * *

Sec. 40. "Employing unit" means any individual or type of organization, including any partnership, association,

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trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

QUESTION PRESENTED

The appellee Michigan employment security commission, hereinafter referred to as the appellee-commission, restates what it believes to be the only possible federal question raised:

> May the State of Michigan allow unemployment benefits without disqualification to persons unemployed through no fault of their own when their involuntary unemployment at plants of the General Motors Corporation in Flint, Michigan results from a strike in a Mansfield, Ohio General Motors Corporation plant?

In addition, appellee-commission, by its Motion to Dismiss or Affirm, raises the following issues:

(1) The Jurisdictional Statement does not present a substantial federal question;

(2) The judgment of the supreme court of Michigan rests on an adequate non-federal basis.

STATEMENT OF THE CASE

The appellee-commission accepts the "Statement of the Case" as presented by the appellant in its Jurisdictional Statement.

The individual appellees herein, including Robert H. Stinson, numbering 4,798, shall hereinafter be referred to as claimant-appellees.

REASONS FOR GRANTING MOTION TO DISMISS OR AFFIRM

(1) A Substantial Federal Question Is Not Presented:

Succinctly stated, appellant argues that there are substantial federal questions involved (1) because the supreme court of Michigan in construing the disqualification for unemployment benefits imposable under section 29 (1) (b) of the Michigan employment security act refused to accept as binding a provision of the National Agreement[2] between

[2] The pertinent paragraph of this Agreement reads, as follows: "The Union has requested this National Agreement in place of independent agreements for each bargaining unit covered hereby. Accordingly an authorized strike in one bargaining unit under this Agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this Agreement, will be considered an authorized strike in any such affected bargaining unit." Jurisdictional Statement, p 6.

the claimant-appellees' union and the appellant which provided that an authorized strike in one bargaining unit under said Agreement which results in the interruption of the flow of material and services to operations in any other bargaining unit under said Agreement would be considered an authorized strike in any such affected bargaining unit, and (2) because the supreme court of Michigan considered this provision of the National Agreement an illegal waiver of unemployment benefits under section 31 of the Michigan employment security act. The appellant contends that these holdings of the supreme court of Michigan result in interpretations of the Michigan employment security act which offend the "supremacy,"[3] "equal protection,"[4] "commerce"[5] and "due process"[6] clauses of the Federal Constitution, and, further, that the employment security law of Michigan, as interpreted by its supreme court, runs counter to the preemptive provisions and policies of the Federal Labor Management Relations Act of 1947.[7]

Appellee-commission denies that any of the aforesaid alleged claims present a substantial federal question.

(a) *The Supremacy Clause:*

The cases of *California* v. *Taylor*, 353 US 553, 77 S Ct 1037, 1 L ed 2d 1034 and *Teamsters Union* v. *Oliver*, 358 US 283, 79 S Ct 297, 3 L ed 2d 312, are cited by the appellant

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[3] Article VI, clause 2, U.S. Constitution.

[4] Article XIV, section 1, U.S. Constitution.

[5] Article I, section 8, clause 3, U.S. Constitution.

[6] Article XIV, section 1, U.S. Constitution.

[7] 29 USC (1958 ed) §141. *et seq.*

in support of its contention that the right to contract under the Federal Labor Management Relations Act, as amended in 1947, is unlimited and that state law is without authority to qualify or limit such an agreement because contracts negotiated under the aegis of said Act take on the *imprimatur* of the federal law and are paramount to conflicting state law under the "supremacy clause" of the Federal Constitution. The appellee-commission submits that these cases stand for the principle that the parties to a collective bargaining agreement entered into pursuant to said law may contract as to their mutual rights and liabilities with regard to lawful subjects involving their relationship, and that is all; this is in furtherance of the federal policy therein contained that collective bargaining is "* * * for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[8]

By implication, the appellant would, under the "supremacy clause" of the Federal Constitution extend the validity of a collective bargaining agreement to matters which are neither conditions of employment, nor mutual, nor involve their employer-employee relationship. The state alone may allow or deny unemployment compensation benefits and may do so only in accordance with the state law establishing and governing same. Unemployment compensation benefits under state law patently are not, and may not be equated with, mutual rights which exist between the worker and the employer; they may not be granted or denied by an employer, nor may they be the subject matter of bargaining or contract between the worker and the employer. A legal principle which would sanction the converse would render enforceable a collective bargaining agreement increasing or decreasing unemployment compensa-

[8] 29 USC (1958 ed), §151.

tion benefits under stipulated conditions; it would have a like effect upon a collective bargaining agreement providing for the increase or decrease of an employer's tax rate — despite state unemployment compensation statutes to the contrary.

In a suit in which the employer contended that unemployment compensation benefits received during an award period should be deducted by the National Labor Relations Board from back pay awards, this Court said:

> "Payments of unemployment compensation were not made to the employees by respondent but by the state out of state funds derived from taxation. True, these taxes were paid by employers, and thus to some extent respondent helped to create the fund. However, the payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment for the benefit of the entire state." *Labor Board* v. *Gullett Gin Co.*, 340 US 361, 364, 71 S Ct 337, 95 L ed 337.

Similarly, in *National Labor Relations Board* v. *Moss Planing Mill Co.*, 224 F 2d 702, at page 704, the court said:

> "The employer participates only as a taxpayer. As such, his obligation is not to the recipient of unemployment benefits but to the State. There is no contractual relationship between him and the recipient. It is, of course, quite clear that any benefit that the recipient of unemployment compensation receives is collateral to the fact that he was working for a particular employer."

In support of appellant's contention as to the effect of the "supremacy clause" of the Federal Constitution, it

cites the *Taylor* and *Oliver Cases, supra*, both of which were concerned with conditions of employment. They involved the validity of contractual provisions which were governed by federal statutes. In both instances this Court held that the terms of the agreements could not be invalidated by a state law. However, it must be remembered that these were matters upon which the parties had a federally granted right to negotiate by virtue of the Railway Labor Act and the National Labor Relations Act, respectively.

In the case now before the Court, we are not dealing with an actual fact situation, as were the *Taylor* and *Oliver Cases;* on the contrary, the parties to the agreement here involved heve created a fiction, to the end that an authorized strike is by contract deemed to exist, contrary to actuality, in any bargaining unit under said agreement which experiences an interruption in the flow of material or services as the result of an authorized strike in a feeder bargaining unit covered by said Agreement. Thus integrality, by agreement between the union and the employer, is made the basic test of the extent of "the establishment," despite the fact that this concept is premised on a make-believe situation. This type of maneuver is frowned upon by the law, which favors the examination of the true and existent facts and the application of the law thereto. In *In Re Morton,* 284 NY 167, 30 NE 2d 369, the court held that under the unemployment compensation law an agreement of the employee to waive the benefits of the act is void, and no written agreement may be entered into to preclude an examination to determine whether the actual relationship is such as to bring the employee within the scope of the law. See also *Knowles* v. *Roberts,* Ohio App., 117 NE 2d 173, to the same effect.

In essence, it is the appellant's position that, just as *Park* v. *Employment Security Commission,* 355 Mich 103, 94 NW

2d 407, overruled *Chrysler Corp.* v. *Smith*, 297 Mich 438, 298 NW 87, to the extent that the latter adopted "integral functioning" as the basic test of the extent of "the establishment" under the Michigan employment security act, the contracting parties here have, by their contract, overruled the *Park Case* and, on the basis of the appellant's version of the applicability of the "supremacy clause," the Michigan court must accept the fact that it has been neutralized.

The appellee-commission cannot accept this thesis. In this connection, attention is directed to the case of *Southern Pacific Co.* v. *Arizona*, 325 US 761, 65 S Ct 1515, 89 L ed 1915. At page 766, it is stated:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, *Reid* v. *Colorado*, 187 U.S. 137, 148; *Missouri Pacific R. Co.* v. *Larabee Mills*, 211 U.S. 612, 621, *et seq.*; *Missouri, K. & T. R. Co.* v. *Harris*, 234 U.S. 412, 418-419; *Welch Co.* v. *New Hampshire*, 306 U.S. 79, 85; *Allen-Bradley Local* v. *Board*, 315 U.S. 740, 749, or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. *Sinnot* v. *Davenport*, 22 How. 227, 243; *Missouri, K. & T. R. Co.* v. *Haber*, 169 U.S. 613, 623; *Savage* v. *Jones*, 225 U.S. 501, 533; *Carey* v. *South Dakota*, 250 U.S. 118, 122; *Atchinson, T. & S.F.R. Co.* v. *Railroad Comm'n* 283 U.S. 380, 391; *Townsend* v. *Yeomans*, 301 U.S. 441, 454."

Specific application of this principle is found in the case of *International Union* v. *Wisconsin Board*, 336 US 245, 69 S Ct 516, 93 L ed 651, wherein negotiations for a collective

bargaining agreement between an employer engaged in interstate commerce and a labor union certified under the National Labor Relations Act as the collective bargaining representative of the employees became deadlocked. In order to exert pressure upon the employer, the union adopted a plan whereby union meetings were called at irregular times during working hours without advance notice to the employer or any notice as to whether or when the employees would return. In a period of less than 5 months, 27 such work stoppages occurred. The employer was not informed during this period of any specific demands which these tactics were designed to enforce nor what concessions it could make to avoid them. In a proceeding under the Wisconsin employment peace act, the Wisconsin employment relations board issued an order which was construed and upheld by the state supreme court as forbidding the individual defendants and members of the union from engaging in concerted efforts to interfere with production by these methods. Commencing at page 252 of *International Union*, supra, it is stated:

> "The substantial issue is whether Congress has protected the union conduct which the State has forbidden, and hence the state legislation must yield. When the order of the State Board and the decision of the State Supreme Court were made, the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. §§151-166, was in effect and questions of conflict between state and federal law were raised and decided with reference to it. However, the order imposes a continuing restraint which it is contended now conflicts with the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. §§141-197, which amended the earlier statute. We therefore consider the state action in relation to both Federal Acts.

"Congress has not seen fit in either of these Acts to declare either a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the several states traditionally have exercised control.

* * * * *

"Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. §8 (b) (4), 61 Stat. 140, 141; 29 U.S.C. §158 (b) (4). Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner. While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the State's power to police coercion by those methods."

Relating the principles of the *International Union Case, supra,* to the matter now before this Court, it is seen that, in the same fashion, congress has not seen fit, in the National Labor Relations Act, to declare either a general policy or

to lay down specific rules with respect to that Act's effect on state regulations for the payment of unemployment compensation benefits, over which the several states traditionally have exercised control. All the more is this so, when it is considered that neither in the Social Security Act[9] nor in the Federal Unemployment Tax Act[10] is provision made for the federal payment of unemployment compensation benefits. Instead, the federal government fosters the payment of such benefits, as a matter of federal policy, through cooperation with the states.

The case of *Carmichael* v. *Southern Coal & Coke Co.*, 301 US 495, 57 S Ct 868, 81 L ed 1245, held that the federal and state unemployment tax acts embodied a cooperative legislative effort for the accomplishment of a common purpose which neither government could achieve by itself. At page 526, in answer to the claim that the states had surrendered sovereignty to the federal government in the area of unemployment compensation, this Court stated:

> "As the state legislation is not the product of a prohibited coercion, there is little else to which appellees can point as indicating a surrender of state sovereignty. As the opinion in the *Chas. C. Steward Machine Co.* case points out, full liberty of action is secured to the state by both statutes. The unemployment compensation fund is administered in accordance with state law by the state commission. The statute may be repealed at the will of the legislature, and in that case the state will be free to withdraw at any time its unexpended share of the Unemployment Trust Fund from the treasury of the United States, and to use it for any

[9] 42 USC (1958 ed), § 501 *et seq.*

[10] 26 USC (1958 ed), § 3301 *et seq.*

> public purpose. And, for the reasons stated in the opinion in the *Chas. C. Steward Machine Co.* case, we conclude that the deposit by the state of its compensation fund in the Unemployment Trust Fund involves no more of a surrender of sovereignty than does the choice of any other depository for state funds. The power to contract and the power to select appropriate agencies and instrumentalities for the execution of state policy are attributes of state sovereignty. They are not lost by their exercise."

In spite of this clearly delineated public purpose common to both the national and state governments, the appellant would have us strike down the waiver provision of section 31 of the Michigan employment security act on the theory that a contract provision pursuant to a federal enactment foreign to the joint federal-state unemployment compensation program mandates this anomaly.

The appellee-commission submits that, in view of the foregoing, the "supremacy clause" of the Federal Constitution does not mandate the avoidance of the application of the waiver provisions of section 31 of the Michigan employment security act nor does it require the *acceptance* of the contract-created fictitious strike in the disposition of the cause here before the Court.

(b) *The Equal Protection Clause:*

Because the appellant's arguments in relation to its separately stated federal questions are not segregated, it is difficult to discern just what part of its argument is based on the "equal protection" clause. Appellant merely states that "[w]hether a labor dispute is initiated and negotiated in a plant located in another state has no bearing

on the basic objectives of this social legislation,"[11] that "[s]uch arbitrary and discriminatory distinctions have no reasonable relationship to the voluntary or involuntary nature of a claimant's unemployment, or to whether or not the claimant was directly involved in the strike, lockout, or labor dispute," [12] and that "[t]herefore, the test of involvement applied by the appeal board does not constitute a reasonable classification, and the result clearly imposes a discriminatory burden on inter-state employers, both tax-wise and labor relations-wise in violation of the "equal protection" and "commerce" clauses of the Constitution."[13]

Both the referee and the appeal board in this matter found that the claimant-appellees working in the Flint, Michigan plants of the appellant became unemployed due to a labor dispute in its Mansfield, Ohio plant, which labor dispute, because it interrupted the flow of materials to their plant caused a stoppage of work and their resultant unemployment. Both administrative bodies also held that there was a labor dispute within the establishment of the Michigan Buick and Fisher Body Plants, but held, however, that since the claimant-appellees were not directly involved in the labor dispute they were not subject to disqualification for unemployment benefits under the terms of section 29(1)(b) of the Michigan employment security act.

The decision of the supreme court of Michigan, in effect, affirmed the foregoing disposition of the case. In reversing the Ingham circuit court, which had reversed the appeal

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[11] Jurisdictional Statement, p 34.

[12] Jurisdictional Statement, p 34.

[13] Jurisdictional Statement, pp 34-35.

board, the majority of the court held (1) that the Flint plants must be regarded as a separate establishment from the Mansfield, Ohio plant insofar as the application of said section 29(I)(b) of the Michigan employment security act is concerned, (2) that paragraph 118 of the National Agreement between the claimant-appellees' union and the appellant constituted an illegal waiver of unemployment benefits contrary to section 31 of the Michigan employment security act, (3) that there was no labor dispute in the Michigan plants where the claimant-appellees were employed and (4) that the "supremacy clause" of the Federal Constitution does not validate a provision of a collective bargaining agreement which is illegal under a state unemployment compensation law. Justice Black, in the dissenting opinion, reported at 376 Mich 135, 135 NW 2d 921, filed July 13, 1965, which opinion was explicitly adopted by the majority of the Michigan court, on rehearing, in its opinion reported in 378 Mich 110, 142 NW 2d 686, filed June 8, 1966, said (pp 143-144):

> "The minority opinion of *Chrysler Corporation* v. *Smith*, 297 Mich 438, 135 ALR 900, later to become law *(Park* v. *Employment Security Commission*, 355 Mich 103), agreed with then Circuit Judge Carr (p 469):
>
> > " 'It is our conclusion from the foregoing that the several plants of appellant Chrysler Corporation must be held to be separate establishments within the meaning of our statute, and in this determination we concur with the conclusion of the referee, the appeal board, and Judge Carr, who affirmed their decisions.'
>
> "The essence of Judge Carr's *Chrysler Case* opinion appears on page 118 of Park's report. *The conclu-*

sion finally reached by that eminent jurist was that 'plaintiff's (Chrysler) different plants must be regarded as separate establishments insofar as the application of section 29, subd (d)[14] *is concerned.' As in Park (140 and again at 151), I agree unreservedly with Judge Carr's view and application of said section 29(d), and therefore look upon Park as precedentially controlling of this appeal.''* (Emphasis supplied.)

It would appear, therefore, that if any classification is made by section 29(1)(b) of the Michigan employment security act, as then in effect and as interpreted by the supreme court of Michigan, it is that it denies unemployment benefits to individuals in an establishment whose unemployment is due to a labor dispute in which they are directly involved, but permits unemployment benefits to individuals unemployed because of a stoppage of work in their establishment as a result of a labor dispute in another establishment of their employer in which they are not directly involved.

The rule governing constitutionally permissible classifications is laid down in *Allied Stores of Ohio, Inc.* v. *Bowers* (1958), 358 US 522, 79 S Ct 437, L ed 2d 480. It is stated as follows (pp 527-528):

> '' 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' *Brown-Forman Co.* v. *Kentucky,* 217 U.S. 563, 573. *State Board of Tax Comm'rs* v. *Jackson,* 283 U.S. 527, 537. That a statute

[14] Subdivision (d) became section 29 (c) of the Michigan employment security act by Act No. 364, PA 1941, and, in turn, it became section 29 (1) (b) thereof by Act No. 360, PA 1947.

may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy. *American Sugar Ref. Co.* v. *Louisiana,* 179 U.S. 89; *Stebbins* v. *Riley,* 268 U.S. 137, 142.

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"• • • Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it. *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78; *Quong Wing* v. *Kirkendall,* 223 U.S. 59; *Rast* v. *Van Deman & Lewis Co.,* "249 U.S. 342, 357; *State Tax Comm'rs* v. *Jackson,* 283 U.S., at 537."

Concurring, Mr. Justice Brennan, with whom Mr. Justice Harlan joined, said (p 532):

"• • • the utmost latitude, under the Equal Protection Clause, must be afforded a State in defining categories of classification."

The denial of "equal protection" argument involving the statutory provision here present was previously raised without success, in this Court. See *Lawrence Baking Company* v. *Unemployment Compensation Commission* (1944), 308 Mich 198, 13 NW 2d 260, 154 ALR 660, in which a petition for writ of certiorari was denied by the U.S. Supreme Court, 323 US 738, 65 S Ct 42, 89 L ed 591 (1944). In that case striking employees filed claims with the appellee-commission, then known as the Michigan unemployment compensation commission, for unemployment benefits after a stoppage of work occurred in connection with a dispute

with their employer. The stoppage was short-lived as the employer replaced the striking workers with other individuals.

The supreme court of Michigan allowed payment of benefits on the ground that the striking employees had been replaced and, as a result, there was no "stoppage of work" in the establishment concerned. It, therefore, held that the disqualification was inapplicable. The employer's attack raised the issues of "due process and equal protection of law." The Michigan supreme court rejected this attack, quoting in support from *Carmichael* v. *Southern Coal & Coke Co.*, 301 US 495, 57 S Ct 868, 81 L ed 1245, which upheld the Alabama unemployment compensation act, as follows (p 215):

> "'A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.'"

In holding that the classification which was involved was constitutionally valid, the supreme court of Michigan said (p 212):

> "Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not result in arbitrary or unjust discrimination between employers."

Also see *Lower Vein Coal Co.* v. *Industrial Board of Indiana*, 255 US 144, 41 S Ct 252, 65 L ed 555, *Ward &*

Gow v. *Krinsky,* 259 US 503, 42 S Ct 529, 66 L ed 1033, involving construction of state workmen's compensation acts, to the same effect.

The classification here involved, which groups by plant location, is challenged by the appellant, which urges classification based on functional integrality. Every unemployment compensation law in the land contains some form of labor dispute disqualification which follows a similar method of classification, namely, by physical location. In thirty-nine states, and the District of Columbia, the classification hinges upon whether or not the labor dispute in question occurs in the "factory, establishment, or other premises." Eight states, including Michigan, speak of "the establishment." One state, Idaho, speaks in terms of "premises." (See Commerce Clearing House: Unemployment Insurance Reported.) Surely there is no basis for the claim that this method of classification in Michigan is "invidious or palpably arbitrary." *Allied Stores of Ohio, Inc., supra.*

(c) *The Commerce Clause:*

Just what aspect of appellant's argument is with respect to the "commerce clause" is, likewise, not easily discernible except that it is claimed that the Michigan employment security act, as interpreted by the supreme court of Michigan, imposes a discriminatory burden on inter-state employers, both tax-wise and labor relations-wise. The nature of the alleged discrimination, however, is not spelled out or delineated.

What is the "undue burden" here in question?

Under the Michigan employment security act benefits are paid out of a pooled fund created and maintained by tax-

ation of employers (section 17(a)). However, the tax rate of any employer may be, but not necessarily is, affected by the payment of benefits to his employees or former workers in any particular case. The commission maintains a separate "rating account" for each employer, which, as of a prescribed computation date, relates the total taxable wages paid by an employer for a statutorily prescribed period to the amount of taxes paid by the employer at his regular computed rate, less the total benefits charged to the employer's account (sections 17(2) and 18(c)). Based thereon (in the absence of consecutive negative balances in the rating account), the current tax rate assigned to an employer may vary between 0.0% and 4.6% (section 19(a)). There is nothing in the record concerning what effect, if any, the payment of the claims here in question, will have upon the tax rate of appellant. In any event, the tax imposed to create and maintain the fund out of which unemployment compensation benefits are paid here is for a public purpose expressly declared in an enactment falling within the range of legislative police powers, and the policy involved is one with which the courts never have interfered.

Any contention that the interpretation of the statute by the Michigan court places an undue burden on interstate commerce must perforce be based on the fact that the appellant is a foreign corporation doing business in Michigan, and engaged in selling its products throughout the United States. The fact that the court awarded benefits to Michigan workers laid off as a result of a strike in a plant located in Mansfield, Ohio is not significant. In determining if an undue burden exists, location of the struck plant in Mansfield, Ohio or in Saginaw, Michigan is, it is submitted, a distinction without a difference insofar as the legal principle involved is concerned.

If an increase in the tax rate would not be an undue burden had the strike occurred in a Saginaw, Michigan plant of the company, the occurrence of the strike in Ohio creates no greater impact.

The Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1954, provides for the crediting against the payroll tax levied on employers under its provisions (68A Stat 439 (1954), 26 USC §3301), contributions paid under State unemployment compensation laws (68A Stat 439 (1954), 26 USC §3302), provided such state laws are certified as containing certain minimum standards. Reference to these standards (68A Stat 443 (1954), 26 USC 3304(a)) establishes that they in no way require that any disqualification be imposed by a state for unemployment due to a labor dispute in order for such certification to be granted.

No constitutional prohibition, we submit, would, therefore, prevent the Michigan legislature, if it so chose, from amending its labor dispute disqualification provisions so as to allow the payment of unemployment benefits to strikers while they are on strike.

In what respect, then, is it unconstitutional to provide, as does the Michigan law in this case, that those involuntarily laid off at one plant because of a strike in another plant of the same corporation are not disqualified, based on a method of classification which categorizes on the basis of whether or not the dispute occurred in the "establishment" in which claimant was last employed?

It is the appellee-commission's position that the classification involved in this case rests on a reasonable consideration of difference or policy and that the selection made is neither capricious nor arbitrary, and that there is, therefore, no violation of the commerce clause.

(d) *The Due Process Clause:*

The contention that this case presents a federal question because the appellant has been denied "due process" is posed in the "Questions Presented" portion of appellant's Jurisdictional Statement, but it has not been pointedly argued. Merely because appellant's tax rate may be affected by the allowance of unemployment benefits is certainly not a denial of "due process." As previously observed, the Michigan legislature is not required, by any federal or state law or any federal or state constitution mandate, to provide a disqualification for unemployment benefits to individuals involved in labor disputes. As a denial of procedural "due process" is not claimed, appellant's contention that the decision of the supreme court of Michigan denied "due process" must be characterized as without basis.

(e) *There is no conflict between the Michigan employment security act and the federal laws regulating labor relations:*

The contention that a federal question is here presented because the Michigan employment security act, as interpreted by the supreme court of Michigan, conflicts with a field preempted by the provisions and policies of the Labor Management Relations Act of 1947 is, likewise, without basis. The Michigan employment security act in no way invades the ambit of regulation or jurisdiction of the federal Labor Management Relations Act. Nor is there anything in the Labor Management Relations Act which may specifically, or by implication, be construed as granting to federal authorities the right to determine for the states what individuals unemployed because of a labor dispute may, or may not, be granted unemployment benefits. What constitutes a "labor dispute" for purposes relevant to the

Labor Management Relations Act is not by said law foisted upon the states for unemployment benefit purposes. The Labor Management Relations Act is concerned with its own purposes and objectives, and not with the unemployment benefit laws of the several states. Likewise, the Michigan employment security act in no way invades the field of labor-management relations, or attempts to determine for federal purposes whether a labor dispute does or does not exist.

(2) The Michigan Decision Was Based Upon Adequate Non-Federal Grounds.

The Court below ruled as a matter of law that the appellant's manufacturing plants located in Flint, Michigan and its plant in Mansfield, Ohio do not constitute a single "establishment" within the meaning of the Michigan employment security act. Appellant argues that the term "establishment" includes all the plants wherever located because of a provision in its contract with the union representing the claimant-appellees. The Court rejected this contention. It held that the appellant's Buick and Fisher Plant No. 1, located at Flint, were separate "establishments" and that despite the said provision of the agreement, there was no work stoppage at said plants because of the stoppage at its Mansfield, Ohio plant. By so ruling, it precluded consideration of the strike at the Mansfield, Ohio plant from consideration in determining the disqualification of the claimant-appellees herein as provided by the Michigan employment security act in section 29(1)(b) thereof.

It is thus clear that what the supreme court of Michigan did here was to construe a statute passed by the Michigan legislature. In so doing, it affirmed the doctrine which it

had established in *Park* v. *Employment Security Commission, supra.*

The decision was, therefore, based solely on adequate state grounds.

This Court has ruled that it will not review a state court decision where independent and adequate non-federal grounds of decision appear. See *Herb* v. *Pitcairn,* 324 US 117, 125-126, 65 S Ct 459, 89 L ed 789, where it was stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. (Citing cases.) The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

The state court's decision here before the Court required no reference to a federal question, the non-federal grounds being sufficiently broad to support the judgment. *Eustis* v. *Bolles,* 150 US 361, 369-70, 14 S Ct 131, 37 L ed 1111.

CONCLUSION

It is respectfully submitted that this Court, for the reasons herein stated, does not have jurisdiction of this appeal and, therefore, should grant this Motion to Dismiss or Affirm.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 658

GENERAL MOTORS CORPORATION,
a Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),
Appellant,
v.
APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
and
ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

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General Motors Corporation, Appellant herein, pursuant to Rule 16 (3) of the Revised Rules of this Court, makes the following reply in opposition to the motions to dismiss or affirm filed by the Michigan Employment Security Commission and Robert H. Stinson, et al., Appellees.

(1) THE DECISION OF THE STATE COURT WAS NOT BASED UPON INDEPENDENT AND ADEQUATE NON-FEDERAL GROUNDS.

The Appellees contend that the judgment of the Michigan Supreme Court from which this appeal is taken rests upon "adequate non-federal basis" and that the appeal should therefore be dismissed under Rule 16(1)(b). This contention is patently without merit and should be rejected by the Court.

In explanation of their contention, Appellees Robert H. Stinson, et al., hereinafter referred to as the Claimants, describe the "adequate" non-federal bases for the judgment at pages 15-16 of their motion as follows:

> "(1) employees in the Michigan plants who claim benefits here, laid off due to a strike in an Ohio plant, were not disqualified for unemployment compensation under the Michigan Statute because the struck plant and their plants were not one and the same establishment; and (2) the language of the contract between two private parties, urged by one of them as rendering the waiver provision of the State law inoperative, was invalid insofar as this objective was concerned."

Appellee MESC, hereinafter referred to as the Commission, described the non-federal bases for the judgment in similar terms at page 25 of its motion.

One obvious fallacy in these contentions lies in the open admission that the Michigan Court invalidated Paragraph 118 of the collective bargaining agreement by its construction of the "waiver" provisions of Section 31 of the State Act. This construction automatically invoked the federal question of whether the state law as so applied was invalid as repugnant to the Supremacy Clause of the United States Constitution and the Federal Labor Management Relations

Act. In order to reach its decision, the State Court was required to reject the contention of Appellant that Paragraph 118 carried the imprimatur of federal law and therefore held supremacy over the conflicting provisions of the state law.

In addition, the decision of the Michigan Court obviously rested squarely on a determination of the federal question of whether the payment of unemployment benefits to the Claimants during a strike in which they were directly interested and charging such benefits to Appellant's account was repugnant to the Labor Management Relations Act, and constituted an unconstitutional state regulation in an area preempted by that Act under the Commerce Clause of the United States Constitution.

Contrary to the contentions of Appellees, the State Court expressly acknowledged that the federal questions involved in this appeal required their consideration. Thus, Justice Black's Opinion, fully concurred in by the four-member majority, discussed and decided the question of conflict between the Michigan Act and federal labor law. That discussion did not constitute gratuitous dictum. On the contrary, his opinion turned directly on the federal questions raised by this appeal.

In support of the contention that the state court judgment rested on independent non-federal grounds, at page 11 of the Claimant's motion the observation is made that, "*There is not one word of reference in the Souris Opinion to any federal question.*"[1] However, Justice Souris expressly stated at the outset of his Opinion (App. A-11, p. 66)[2] that he concurred in Justice Black's Opinion "for the

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[1] Significantly, unlike Justice Black's Opinion, the Opinion of Justice Souris was not concurred in fully by the four-member majority of the Michigan Court. Justice Black merely "concurred in the result" (App. A-11, p. 66), apparently because he had reached the same conclusion for the reasons set forth in his own Opinion.

[2] Citations to Appendices will refer to the Appendices appended to the Jurisdictional Statement filed herein by Appellant.